

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 750.

THE UNITED STATES

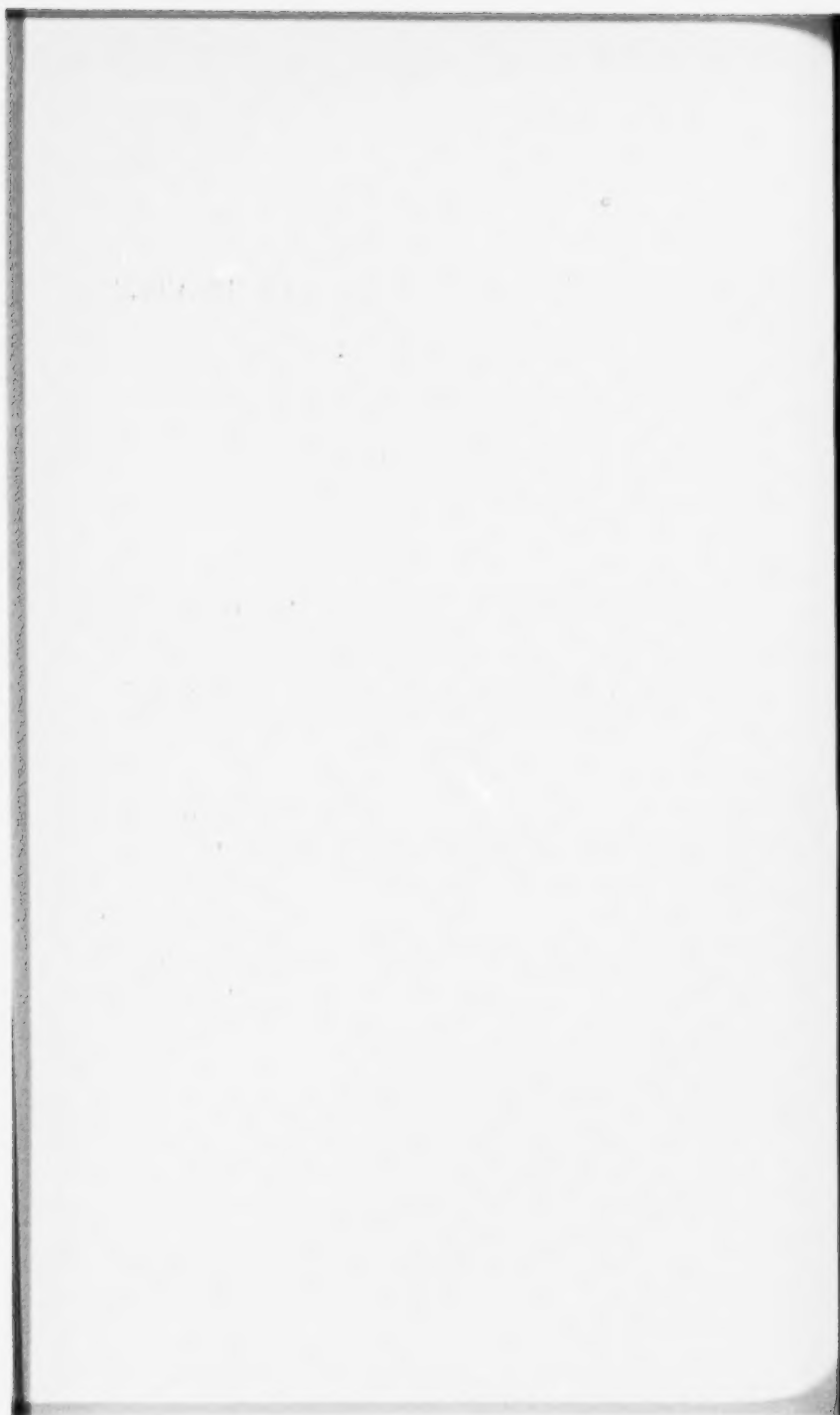
vs.

THE MIDWEST OIL COMPANY ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Eighth Circuit.

THE UNITED STATES

vs.

THE MIDWEST OIL COMPANY, ET AL., APPELLEES.

} No. 3996.

The United States Circuit Court of Appeals for the Eighth Circuit certifies that the record in the above-entitled cause, now pending in said court upon an appeal from the District Court of the United States for the District of Wyoming, discloses the following:

On September 27, 1909, the Acting Secretary of the Interior, by direction of the President, approved a written recommendation and order, which (omitting description of lands not the subject of this proceeding) is as follows:

"SEPTEMBER 27, 1909.

"The honorable the SECRETARY OF THE INTERIOR.

"SIR: In accordance with your orders I have the honor to submit the following recommendation, which covers approximately 3,041,000 acres, of which the larger part is probably private land and not affected by this withdrawal:

"TEMPORARY PETROLEUM WITHDRAWAL NO. 5.

"In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

"(Here follow descriptions of lands, including the following:)

"WYOMING.

"(Sixth principal meridian.)

2 "T. 39 N., R. 79 W.

"Very respectfully,

"H. C. RIZER, *Acting Director.*"

"Approved September 27, 1909, and sent to General Land Office.

"FRANK PIERCE, *Acting Secretary.*

"E. S. F."

Temporary Petroleum Withdrawal No. 5, in the form set forth in the foregoing communication, was thereupon immediately promulgated.

In March 27, 1910, the grantors of the defendants (appellees), designated in the bill as "original claimants," entered upon a certain 160 acres of land included within the withdrawal above mentioned, to wit, the NE. $\frac{1}{4}$ of section 11, in T. 39 N., R. 79 W., of the sixth principal meridian, in the State of Wyoming, and commenced to drill a well for the purpose of exploring the said land and premises for petroleum, and thereafter said drilling operations were continued by the said original claimants until they had caused the said well to be sunk to a great depth and had, on May 5, 1910, therein encountered and rendered subject to ready extraction large deposits of petroleum of great commercial value within the said described parcel of land.

On May 4, 1910, the said original claimants caused to be filed for record and recorded in the records of the county of Natrona, State of Wyoming, a certain writing, purporting to be signed in their respective names, and purporting to be a location certificate evidencing a claim and location by them of the said described land as a petroleum placer mining claim under and in pursuance of the mining laws of the United States. At some time subsequent to July 2, 1910, the said original claimants assigned and transferred all such right, title, or interest as they or any of them ever had or claimed in or to the said described land to certain of the defendants, now appellees.

3 Under date of June 25, 1910, there was approved by the President an act of Congress, entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases." (36 Stat. L., 847, 848.)

On July 2, 1910, the President approved a written recommendation and order, which (omitting description of lands not the subject of this proceeding) is as follows:

"The honorable the SECRETARY OF THE INTERIOR.

"SIR: In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Wyoming, involving approximately 255,461 acres:

"ORDER OF WITHDRAWAL.

"Petroleum Reserve No. 8.

"It is hereby ordered that those certain orders of withdrawal made heretofore—

"On Sept. 27, 1909, and described as Temporary Petroleum Withdrawal No. 5;

"On Oct. 12, 1909, and described as Temporary Petroleum Withdrawal No. 6;

"On Oct. 12, 1909, and described as Temporary Petroleum Withdrawal No. 7;

" On Oct. 30, 1909, and described as Temporary Petroleum Withdrawal No. 8;

" On Feb. 12, 1910, and described as Temporary Petroleum Withdrawal No. 13;

" On Oct. 8, 1910, and described as Temporary Petroleum Withdrawal No. 14;

" On June 18, 1910, and described as Temporary Petroleum Withdrawal No. 17;

4 " in so far as the same include any of the lands hereinafter described, be, and the same are hereby, ratified, confirmed, and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910, there is hereby withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to wit:

"(Here follow descriptions, including the following:)

"(Sixth principal meridian, Wyoming.)

" T. 39 N., R. 79. W., secs. 11, 12, and 13.

" Very respectfully,

" GEORGE OTIS SMITH, *Director*.

" July 1, 1910.

" Respectfully referred to the President, with recommendation that same be approved.

" R. A. BALLINGER, *Secretary*.

" Approved July 2, 1910, and referred to the Secretary of the Interior.

" WM. H. TAFT, *President*.

" Referred to the Commissioner of the General Land Office for appropriate action.

" FRANK PIERCE, *Acting Secretary*.

" D. M. C."

5 The foregoing facts appear by the bill, which also avers that by the order of September 27, 1909, supra, the described tract of land, "in common with many other tracts of the public lands of the United States, was withdrawn from mineral exploration and from any form whatsoever of location, settlement, selection, filing, entry, occupation, possession, purchase, or acquisition under the public-land laws or any thereof"; and that the said order of September 27, 1909, "has never been retracted or set aside; but, on the contrary, the same now is, and at all times since the aforesaid date thereof has continuously remained, in full force and effect."

It appears by the bill expressly that the described tract was unoccupied and unclaimed on September 27, 1909, when the first of the said orders of withdrawal was made, and remained so until entered upon by the original claimants March 27, 1910.

The bill alleges that the defendants have extracted and threaten to continue the extraction of oil from the described tract of land, and seeks a perpetual injunction and an accounting upon the theory that the location, being in the face of the withdrawal order of September 27, 1909, was void, and that the defendants are therefore trespassers. The bill did not allege the purposes of the order of withdrawal, beyond setting out the order itself in totidem verbis, except as to descriptions of lands not the subject of this proceeding. It was filed February 14, 1913.

The defendants made no request for an order requiring the plaintiff to give a further and better statement of the nature of its claim, or further and better particulars of any of the matters stated in the bill, but on March 26, 1913, filed their joint and several motion to dismiss the bill upon the grounds following, and those only, to wit:

"First. It appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed by the bill against the defendants, or either or any of them.

"Second. It appears by the plaintiff's own showing by the said bill and the law applicable thereto that the so-called order of withdrawal alleged to have been made by the Secretary of the Interior on September 27, 1909, and entitled 'Temporary Petroleum Withdrawal Number 5' (and a copy of which order is attached to the bill), was made without authority of law, and at the time it was made and promulgated, if it was in truth and in fact made or promulgated as alleged in the bill, was and ever since has been wholly void and of no effect and contrary to and in violation

6 of the provisions of the Constitution and laws of the United States with respect of the control and disposition of the public lands of the United States, and particularly public lands containing deposits of petroleum or other minerals. By reason whereof the plaintiff cannot have, and is not entitled to receive, any benefit or advantage from the said so-called withdrawal order of September 27th, 1909, its said bill and all relief prayed for thereby being conditioned and based exclusively upon the alleged validity and effect of said withdrawal order.

"Third. It appears by the plaintiff's own showing by the said bill that the defendants, or their grantors under whom they claim and have title and who are referred to in the bill as the 'original claimants,' entered upon the mineral land described therein, to wit, the northeast quarter of section eleven of township thirty-nine north, of range seventy-nine west of the sixth principal meridian, on March 27, 1910, and commenced work for the purpose of exploration and for the discovery of petroleum thereon, and entered into the actual occupation of said land, then and there being a part of the public

mineral domain of the United States, open to occupation and exploration for the discovery of petroleum, and thereafter were continuously in the diligent prosecution of such work until May 5th, 1910, on which date petroleum was encountered and discovered by them thereon in paying quantities.

"It further appears from the plaintiff's bill that on the 2nd day of July, 1910, and at the time of the alleged making and promulgation of that certain order styled in the bill 'Order of Withdrawal, Petroleum Reserved, No. 8,' the said land had been duly located and claimed under the mineral-land laws of the United States by the original claimants, and that said claimants were at said date in the actual occupation and possession thereof under such laws and had theretofore made a valid and subsisting discovery of petroleum in said land. Therefore, under the laws of the United States, particularly those relating to the occupation, possession, and location of mineral lands, such land was not, upon said 2nd day of July, 1910, subject to withdrawal under said order of July 2nd, 1910, nor were the vested rights of the original claimants, then subsisting therein, impaired or affected thereby. Further, by the express terms of the act of the Congress of the United States, approved June 25, 1910 (36 Stat. L., 847), set forth at large in the bill, and under whose exclusive authority said withdrawal order of July 2nd, 1910, was made or promulgated, if it was so made and promulgated, the said land was expressly removed and exempted from any such withdrawal.

"It further appears from the bill that after July 2, 1910, but long prior to the commencement of this suit, the original claimants assigned, set over, and conveyed unto certain of the defendants all their right, claim, interest, and title to said land, initiated, acquired, and vested as aforesaid; and that the defendants, or some of them, are now, and were at the time of the commencement of this suit, entitled to and in the actual enjoyment of all of the rights and title of the original claimants, and entitled to and in the occupation and possession of said lands, with the right to mine and extract the petroleum contained therein; and that all of the acts of the defendants, or either of them, complained of in the bill have been done and are being done under and by virtue of the right, title, and interest acquired by their grantors, the original claimants, as aforesaid, prior to July 2, 1910."

Thereafter the defendants' motion was sustained and the bill dismissed by the District Court.

8 And the Circuit Court of Appeals for the Eighth Circuit further certifies that the following questions of law arise upon the record in the case and that their decision is necessary to its proper disposition, and to the end that the cause rightly may be disposed of such court desires the instructions of the Supreme Court of the United States upon those questions, to wit:

1. Prior to the act of June 25, 1910 (36 Stat. L., 847, 848), did the President (or the Secretary of the Interior) have the lawful power, "in aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain," to withdraw public lands containing petroleum and chiefly valuable therefor from all forms of location, selection, filing, entry, or disposal under the public mineral-land laws?

2. Did Petroleum Withdrawal No. 5, of date September 27, 1909, have the effect of preventing the lawful location or acquisition of lands (described in said Withdrawal Order No. 5), which contained petroleum or other mineral oils, and were chiefly valuable therefor, by persons authorized to enter lands under the mining laws of the United States, under the provisions of the act of Congress entitled "An act to authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States," approved February 11, 1897 (29 Stat L., 526)?

3. Must the efficacy of the order of September 27, 1909, to reserve the land in controversy from the subsequent initiation and acquisition of rights under the act of February 11, 1897, *supra*, be held to depend upon the nature of the purpose or purposes for which it was made?

4. If question No. 3 be answered in the affirmative, then was it essential to the validity of the reservation or withdrawal that the purpose or purposes to be expressed in the order itself?

5. If there were specific purposes actuating the order of September 27, 1909, sufficient in law to sustain it and consistent with, but not appearing in its language, was it incumbent on the plaintiff to allege such specific purposes in its bill in order to have the advantage of them as against the defendants' motion to dismiss?

9 6. Assuming that the general purposes expressed in the order of September 27, 1909, do not suffice alone to determine its validity or invalidity and that there might have been another consistent purpose sufficient to sustain it, should the order be presumed to be valid in the absence of any allegation or proof that such other purpose did not exist?

WILLIAM C. HOOK,

JOHN E. CARLAND,

ARBA S. VAN VALKENBURGH,

Judges of the Circuit Court of Appeals for the Eighth Circuit.

10 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of The United States of America, appellant, vs. The Midwest Oil Company et al., appellees, No. 3996, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of Denver, Colorado, in the Eighth Circuit, this 8th day of October, A. D. 1913.

[SEAL.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

11 (Indorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. September term, 1913. No. 3996. The United States of America, appellant, vs. The Midwest Oil Company et al. Certificate of questions to the Supreme Court of the United States. Filed October 8, 1913. John D. Jordan, clerk.

(Indorsement on cover:) File No. 23901. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 750. The United States vs. The Midwest Oil Company et al. (Certificate.) Filed October 14th, 1913. File No. 23901.

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